

GUIDES AND OUTFITTERS ACT

SEPTEMBER 21, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 289]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 289) to authorize the Secretary of the Interior and the Secretary of Agriculture to issue permits for recreation services on lands managed by Federal agencies, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the “Guides and Outfitters Act” or the “GO Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents; definitions.
- Sec. 2. Special recreation permit and fee.
- Sec. 3. Permit across multiple jurisdictions.
- Sec. 4. Guidelines and permit fee calculation.
- Sec. 5. Use of permit fees for permit administration.
- Sec. 6. Adjustment to permit use reviews.
- Sec. 7. Authorization of temporary permits for new uses for the Forest Service and BLM.
- Sec. 8. Indemnification requirements.
- Sec. 9. Streamlining of permitting process.
- Sec. 10. Cost recovery reform.
- Sec. 11. Extension of Forest Service recreation priority use permits.

(c) DEFINITIONS.—In this Act:

(1) SECRETARY.—The term “Secretary” means—

(A) the Secretary of the Interior, with respect to a Federal land management agency (other than the Forest Service); and

(B) the Secretary of Agriculture, with respect to the Forest Service.

(2) SECRETARIES.—The term “Secretaries” means the Secretary of the Interior and the Secretary of Agriculture acting jointly.

SEC. 2. SPECIAL RECREATION PERMIT AND FEE.

Subsection (h) of section 803 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802) is amended to read as follows:

“(h) SPECIAL RECREATION PERMIT AND FEE.—

“(1) IN GENERAL.—The Secretary may—

“(A) issue a special recreation permit for Federal recreational lands and waters; and

“(B) charge a special recreation permit fee in connection with the issuance of the permit.

“(2) SPECIAL RECREATION PERMITS.—The Secretary may issue special recreation permits in the following circumstances:

“(A) For specialized individual and group use of Federal facilities and Federal recreational lands and waters, such as, but not limited to, use of special areas or areas where use is allocated, motorized recreational vehicle use, and group activities or events.

“(B) To recreation service providers who conduct outfitting, guiding, and other recreation services on Federal recreational lands and waters managed by the Forest Service, Bureau of Land Management, Bureau of Reclamation, or the United States Fish and Wildlife Service.

“(C) To recreation service providers who conduct recreation or competitive events, which may involve incidental sales on Federal recreational lands and waters managed by the Forest Service, Bureau of Land Management, Bureau of Reclamation, or the United States Fish and Wildlife Service.

“(3) REDUCTION IN FEDERAL COSTS AND DUPLICATION OF ANALYSIS.—

“(A) IN GENERAL.—The issuance of a new special recreation permit for activities under paragraph (2) shall be categorically excluded from further analysis and documentation under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if the proposed use is the same as or similar to a previously authorized use and the Secretary determines that such issuance does not have significant environmental effects based upon application of the extraordinary circumstances procedures established by the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(B) DEFINITION.—For the purposes of this paragraph, the term ‘similar’ means—

“(i) substantially similar in type, nature, and scope; and

“(ii) will not result in significant new impacts.

“(4) RELATION TO FEES FOR USE OF HIGHWAYS OR ROADS.—An entity that pays a special recreation permit fee shall not be subject to a road cost-sharing fee or a fee for the use of highways or roads that are open to private, noncommercial use within the boundaries of any Federal recreational lands or waters, as authorized under section 6 of Public Law 88–657 (16 U.S.C. 537).”

SEC. 3. PERMIT ACROSS MULTIPLE JURISDICTIONS.

(a) IN GENERAL.—In the case of an activity requiring permits pursuant to subsection (h) of section 803 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802) for use of lands managed by both the Forest Service and the Bureau of Land Management—

(1) the Secretaries may issue a joint permit based upon a single application to both agencies when issuance of a joint permit based upon a single application will lower processing and other administration costs for the permittee, provided that the permit applicant shall have the option to apply for separate permits rather than a joint permit; and

(2) the permit application required under paragraph (1) shall be—

(A) the application required by the lead agency; and

(B) submitted to the lead agency.

(b) REQUIREMENTS OF THE LEAD AGENCY.—The lead agency for a permit under subsection (a) shall—

(1) coordinate with the associated agencies, consistent with the authority of the Secretaries under section 330 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (43 U.S.C. 1703), to develop and issue the single, joint permit that covers the entirety of the trip;

(2) in processing the joint permit application, incorporate the findings, interests, and needs of the associated agencies, provided that such coordination shall not be subject to cost recovery; and

(3) complete the permitting process within a reasonable time after receiving the permit application.

(c) EFFECT ON REGULATIONS.—Nothing in this section shall alter, expand, or limit the applicability of any Federal law (including regulations) to lands administered by the relevant Federal agencies.

(d) DEFINITIONS.—In this section:

(1) ASSOCIATED AGENCY.—The term “associated agency” means an agency that manages the land on which the trip of the special recreation permit applicant will enter after leaving the land managed by the lead agency.

(2) LEAD AGENCY.—The term “lead agency” means the agency that manages the land on which the trip of the special recreation permit applicant will begin.

SEC. 4. GUIDELINES AND PERMIT FEE CALCULATION.

(a) GUIDELINES AND EXCLUSION OF CERTAIN REVENUES.—The Secretary shall—

(1) publish guidelines in the Federal Register for establishing recreation permit fees; and

(2) provide appropriate deductions from gross revenues used as the basis for the fees established under paragraph (1) for—

(A) revenue from goods, services, and activities provided by a recreation service provider outside Federal recreational lands and waters, such as costs for transportation, lodging, and other services before or after a trip; and

(B) fees to be paid by permit holder under applicable law to provide services on other Federal lands, if separate permits are issued to that permit holder for a single event or trip.

(b) FEE CONDITIONS.—The fee charged by the Secretary for a permit issued under section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)) shall not exceed 3 percent of the recreational service provider’s annual gross revenue for activities authorized by the permit on Federal lands, plus applicable revenue additions, minus applicable revenue exclusions or a similar flat per person fee.

(c) DISCLOSURE OF FEES.—A holder of a special recreation permit may inform its customers of the various fees charged by the Secretary under section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)).

SEC. 5. USE OF PERMIT FEES FOR PERMIT ADMINISTRATION.

(a) DEPOSITS.—Subject to subsection (b), revenues from special recreation permits issued to recreation service providers under subparagraphs (B) and (C) of section 803(h)(2) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)(2)) shall be held in special accounts established for each specific unit or area for which such revenues are collected, and shall remain available for expenditure, without further appropriation, until expended.

(b) USE OF PERMIT FEES.—Revenues from special recreation permits issued to recreation service providers under subparagraphs (B) and (C) of section 803(h)(2) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)(2)) shall be used only—

(1) to partially offset the Secretary’s direct cost of administering the permits;

(2) to improve and streamline the permitting process; and

(3) for related recreation infrastructure and other purposes specifically to support recreation activities at the specific site for which use is authorized under the permit, after obtaining input from any related permittees; provided, however, that the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to any advisory committee or other group established to carry out this paragraph.

(c) LIMITATION ON USE OF FEES.—The Secretary may not use any permit fees for biological monitoring on Federal recreational lands and waters under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) for listed or candidate species.

SEC. 6. ADJUSTMENT TO PERMIT USE REVIEWS.

(a) IN GENERAL.—In reviewing and adjusting allocations of use for priority use permits for special uses of Federal recreational lands and waters managed by the Forest Service, and in renewing such permits, the Secretary of Agriculture shall allocate to a permit holder a level of use that is no less than the highest amount of actual annual use over the reviewed period plus 25 percent, capped at the amount of use allocated when the permit was issued unless additional capacity is available. The Secretary may assign any use remaining after adjusting allocations on a temporary basis to qualified permit holders.

(b) WAIVER.—Use reviews under subsection (a) may be waived for periods in which circumstances that prevented use of assigned capacity, such as weather, fire, natural disasters, wildlife displacement, business interruptions, insufficient avail-

ability of hunting and fishing licenses, or when allocations on permits include significant shoulder seasons. The authorizing office may approve non-use without reducing the number of service days assigned to the permit in such circumstances at the request of the permit holder. Approved non-use may be temporarily assigned to other qualified permit holders when conditions warrant.

SEC. 7. AUTHORIZATION OF TEMPORARY PERMITS FOR NEW USES FOR THE FOREST SERVICE AND BLM.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Agriculture and the Secretary of the Interior shall establish and implement a program to authorize temporary permits for new recreational uses of Federal recreational lands and waters managed by the Forest Service or the Bureau of Land Management, respectively, and to provide for the conversions of such temporary permits to long-term permits after 2 years of satisfactory operation. The issuance and conversion of such permits shall be subject to subsection (h)(3) of section 803 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802).

SEC. 8. INDEMNIFICATION REQUIREMENTS.

(a) INDEMNIFICATION.—A permit holder that is prohibited by the State from providing indemnification to the Federal Government shall be considered to be in compliance with indemnification requirements of the Department of the Interior and the Department of Agriculture if the permit holder carries the required minimum amount of liability insurance coverage or is self-insured for the same minimum amount.

(b) EXCULPATORY AGREEMENTS.—The Secretary shall not implement, administer or enforce any regulation or policy prohibiting the use of exculpatory agreements between recreation service providers and their customers for services provided under a special recreation permit.

SEC. 9. STREAMLINING OF PERMITTING PROCESS.

(a) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Agriculture shall revise part 251, subpart B, of title 36 Code of Federal Regulations, and the Secretary of the Interior shall revise subpart 2932, of title 43, Code of Federal Regulations, to streamline the processes for the issuance and renewal of outfitter and guide special use permits. Such amended regulations shall—

(1) shorten application processing times and minimize application and administration costs; and

(2) provide for the use of programmatic environmental assessments and categorical exclusions for environmental reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for the issuance or renewal of outfitter and guide and similar recreation special use permits when the Secretary determines that such compliance is required, to the maximum extent allowable under applicable law, including, but not limited to, use of a categorical exclusion as provided under section 803(h)(3) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)(3)).

(b) ONLINE APPLICATIONS.—To the maximum extent practicable, where feasible and efficient, the Secretary shall make special recreation permit applications available to be filled out and submitted online.

SEC. 10. COST RECOVERY REFORM.

(a) REGULATORY PROCESS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall revise section 251.58 of title 36, Code of Federal Regulations, and the Secretary of the Interior shall revise section 2932.31(e) and (f) of title 43, Code of Federal Regulations, to reduce costs and minimize the burden of cost recovery on small businesses and adverse impacts of cost recovery on jobs in the outfitting and guiding industry and on rural economies provided, however, that nothing in the revised regulations shall further limit the Secretary's authority to issue or renew recreation special use permits.

(b) DE MINIMIS EXEMPTION.—

(1) COST RECOVERY LIMITATION.—Any regulations issued by the Secretary of the Interior or the Secretary of Agriculture to establish fees to recover processing costs for recreation special use applications and monitoring costs for recreation special use authorizations shall include an exemption providing that at least the first 50 hours of work necessary in any one year to process and/or monitor such an application shall not be subject to cost recovery. The application of a 50-hour credit per permit shall also apply to any monitoring fees on a per annum basis during the term of each permit.

(2) APPLICATION OF EXEMPTION.—An exemption under paragraph (1) shall apply to the processing of each recreation special use permit application and monitoring of each recreation special use authorization for which cost recovery

is required, including any application or authorization requiring more than 50 hours (or such other greater number of hours specified for exemption) to process or monitor. In the event that the amount of work required to process such an application or monitor such an authorization exceeds the specified exemption, the amount of work for which cost recovery is required shall be reduced by the amount of the exemption.

(3) **MULTIPLE APPLICATIONS.**—In situations involving multiple recreation special use applications for similar services in the same unit or area that require more than 50 hours (or such other greater number of hours specified for exemption) in the aggregate to process, the Secretary shall, regardless of whether the applications are solicited or unsolicited and whether there is competitive interest—

(A) determine the share of the aggregate amount to be allocated to each application, on an equal or prorated basis, as appropriate; and

(B) for each application, apply a separate exemption of up to 50 hours (or such other greater number of hours specified for exemption) to the share allocated to such application.

(4) **COST REDUCTION.**—The agency processing a recreation special use application shall utilize existing studies and analysis to the greatest extent practicable in order to reduce the amount of work and cost necessary to process the application.

(5) **LIMITATION.**—The Secretary of the Interior and the Secretary of Agriculture may not recover as processing costs for recreation special use applications and monitoring costs for recreation special use authorizations any costs for consultations conducted under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) or for biological monitoring on Federal recreational lands and waters under such Act for listed, proposed, or candidate species.

(6) **WAIVER OF COST RECOVERY.**—The Secretary of the Interior and the Secretary of Agriculture may waive the recovery of costs for processing recreation special use permit applications and renewals, on a categorical or case-by-case basis as appropriate, if the Secretary determines that—

(A) such costs would impose a significant economic burden on any small business or category of small businesses;

(B) such cost recovery could threaten the ability of an applicant or permittee to provide, in a particular area, a particular outdoor recreational activity that is consistent with the public interest and with applicable resource management plans; or

(C) prevailing economic conditions are unfavorable, such as during economic recessions, or when drought, fire, or other natural disasters have depressed economic activity in the area of operation.

SEC. 11. EXTENSION OF FOREST SERVICE RECREATION PRIORITY USE PERMITS.

Where the holder of a special use permit for outfitting and guiding that authorizes priority use has submitted a request for renewal of such permit in accordance with applicable laws and regulations, the Secretary of Agriculture shall have the authority to grant the holder one or more extensions of the existing permit for additional items not to exceed 5 years in the aggregate, as necessary to allow the Secretary to complete the renewal process and to avoid the interruption of services under such permit. Before granting an extension under this section, the Secretary shall take all reasonable and appropriate steps to complete the renewal process before the expiration of the special use permit.

PURPOSE OF THE BILL

The purpose of H.R. 289 is to authorize the Secretary of the Interior and the Secretary of Agriculture to issue permits for recreation services on lands managed by Federal agencies.

BACKGROUND AND NEED FOR LEGISLATION

In 2004, President George W. Bush signed the Federal Lands Recreation Enhancement Act (FLREA, Public Law 108–447). This Act provides the Secretary of the Interior and the Secretary of Agriculture the authority to issue a special recreation permit and charge a special recreation permit fee for specialized uses of federal lands, such as outfitting, group activities, recreation events, and motor vehicle use. Special recreation and special use permits are

issued to manage visitor use, protect natural and cultural resources, minimize recreational use conflicts, provide for the health and safety of visitors, and ensure a fair return to the government for commercial and other uses of public lands. Each year, the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) issue thousands of special recreation and special use permits for events, competitions, and outfitting and guiding on agency-managed lands.

Under FLREA, fees paid to USFS and BLM by permittees, including outfitters and guides, are retained by the agency. Most of the revenue is retained at the local site where the fees are collected. For USFS, BLM, and the Bureau of Reclamation, FLREA authorizes three types of fees (collectively referred to as recreation fees): standard amenity fees; expanded amenity fees; and special recreation permit fees.

While the permitting and fee retention authority provided by FLREA has been positive in many ways, in the intervening years since its passage, a flood of complex rules, regulations, and court decisions have gradually increased the cost of permit administration. Both USFS and BLM have responded by writing a “cost recovery” regulation which requires businesses operating on federal lands to pay for permit processing and environmental analyses when the time required for completing these processes exceed 50 hours. This cost recovery requirement along with complex planning requirements has virtually shut down public lands to new permitted uses which require extensive analysis unless they are programmatic. Unfortunately, a full Environmental Impact Statement or an Environmental Assessment under the National Environmental Policy Act of 1969 can cost tens of thousands of dollars, well beyond the affordability of many small businesses. Even permit renewals are subject to cost recovery and may total tens of thousands of dollars for a group of permits.

Recognizing issues with the current permitting process, USFS recently announced it would be working to modernize its recreation permitting process. These changes include investing in technology to improve business tools and data that support recreation special uses, and creating an electronic permit application process. While USFS should be commended for identifying and acting to fix some of the problems associated with the current permitting process, there are still other issues that must be addressed.

H.R. 289, the Guides and Outfitters Act, is intended to reduce the cost and complexity for those applying for and renewing special recreation and special use permits. The bill amends FLREA to reauthorize permitting authorities (which are currently expiring annually), streamline the recreation permitting process and allow for increased public access to recreation opportunities on federal lands.

COMMITTEE ACTION

H.R. 289 was introduced on January 4, 2017, by Congressman Doug LaMalfa (R-CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands. The bill was additionally referred to the Committee on Agriculture. On June 22, 2017, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman LaMalfa offered an

amendment designated #1; it was agreed to by voice vote. No further amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives on June 27, 2017, by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 18, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 289, the GO Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 289—GO Act

H.R. 289 would change the way certain federal agencies issue special recreation use permits and would change how the affected agencies recover costs associated with the permitting process. Based on information provided by the affected agencies and assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost \$5 million over the 2018–2022 period.

CBO estimates that enacting the bill would affect the amount of fees (which are treated as reductions in direct spending) the affected agencies would collect; therefore, pay-as-you-go procedures apply. However, because the affected agencies have the authority to spend those fees, any change in fee collections would be offset by a corresponding change in the spending of those fees, so that the net effect on direct spending in any year would be negligible. Enacting the bill would not affect revenues.

CBO estimates that enacting the bill would not significantly affect net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 289 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 289 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—						2017– 2022
	2017	2018	2019	2020	2021	2022	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	0	1	1	1	1	1	5
Estimated Outlays	0	1	1	1	1	1	5

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the end of 2017 and that the necessary amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for similar activities.

In 2016, the affected agencies collected roughly \$25 million in special recreation use fees and recovered an estimated \$4 million in charges for issuing those permits. Agencies have the authority to spend all of those amounts under current law.

The bill would authorize those agencies to issue permits for certain new recreational activities without conducting environmental reviews that would be required under current law. The bill also would allow the Forest Service and the Bureau of Land Management to issue joint permits for activities that occur on lands administered by both agencies. Finally, the bill would cap the fee that agencies could charge for a permit at three percent of the annual gross revenue stemming from the permitted activity. CBO lacks sufficient data to estimate the net effect on fee collections that would result from the changes required under the bill. However, because the affected agencies would retain the authority to spend those collections, any change in collections would be offset by an equal change in spending. Thus, CBO estimates that enacting those changes would have only a negligible effect on net direct spending.

H.R. 289 also would require the affected agencies to waive the cost recovery charges for the first 50 hours of work required to complete the process issuing permits for recreation special use and would prevent agencies from recovering costs for completing certain activities under the Endangered Species Act. Based on information provided by the affected agencies, CBO estimates that enacting the bill would reduce collections and the associated direct spending by about \$1 million a year resulting in no net change in direct spending relative to current law. However, because agencies would still be required to perform the work necessary to issue permits, CBO estimates that implementing the bill would cost \$1 million a year over the 2018–2022 period, assuming appropriation of the necessary amounts, to carry out that work.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. H.R. 289 would affect offsetting receipts (from permit and cost recovery fees) and associated direct spending; therefore, pay-as-you-go procedures

apply. However, CBO estimates that any change in offsetting receipts would be offset by a similar change in direct spending and that the net effect would be negligible.

Increase in long term direct spending and deficits: CBO estimates that enacting the bill would not significantly affect net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 289 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Jeff LaFave; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: H. Samuel; Papenfiess, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize the Secretary of the Interior and the Secretary of Agriculture to issue permits for recreation services on lands managed by Federal agencies.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. Section 9 of this bill requires the Secretary of the Interior and the Secretary of Agriculture to revise existing regulations to streamline the processes for the issuance or renewal of outfitter and guide special use permits. Section 10 of the bill directs the Secretary of the Interior and the Secretary of Agriculture to revise existing regulations to reduce costs and minimize the burden of cost recovery on small businesses and cost recovery on jobs in the outfitting and guiding industry and on rural economies. This would be a total of four regulations that would be revised.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

FEDERAL LANDS RECREATION ENHANCEMENT ACT

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DIVISION J—OTHER MATTERS

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TITLE VIII—FEDERAL LANDS RECREATION ENHANCEMENT ACT

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SEC. 803. RECREATION FEE AUTHORITY.

(a) **AUTHORITY OF SECRETARY.**—Beginning in fiscal year 2005 and thereafter, the Secretary may establish, modify, charge, and collect recreation fees at Federal recreational lands and waters as provided for in this section.

(b) **BASIS FOR RECREATION FEES.**—Recreation fees shall be established in a manner consistent with the following criteria:

- (1) The amount of the recreation fee shall be commensurate with the benefits and services provided to the visitor.
- (2) The Secretary shall consider the aggregate effect of recreation fees on recreation users and recreation service providers.
- (3) The Secretary shall consider comparable fees charged elsewhere and by other public agencies and by nearby private sector operators.
- (4) The Secretary shall consider the public policy or management objectives served by the recreation fee.
- (5) The Secretary shall obtain input from the appropriate Recreation Resource Advisory Committee, as provided in section 4(d).
- (6) The Secretary shall consider such other factors or criteria as determined appropriate by the Secretary.

(c) **SPECIAL CONSIDERATIONS.**—The Secretary shall establish the minimum number of recreation fees and shall avoid the collection of multiple or layered recreation fees for similar uses, activities, or programs.

(d) **LIMITATIONS ON RECREATION FEES.**—

- (1) **PROHIBITION ON FEES FOR CERTAIN ACTIVITIES OR SERVICES.**—The Secretary shall not charge any standard amenity recreation fee or expanded amenity recreation fee for Federal recreational lands and waters administered by the Bureau of Land Management, the Forest Service, or the Bureau of Reclamation under this Act for any of the following:
 - (A) Solely for parking, undesignated parking, or picnicking along roads or trailsides.
 - (B) For general access unless specifically authorized under this section.

(C) For dispersed areas with low or no investment unless specifically authorized under this section.

(D) For persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services.

(E) For camping at undeveloped sites that do not provide a minimum number of facilities and services as described in subsection (g)(2)(A).

(F) For use of overlooks or scenic pullouts.

(G) For travel by private, noncommercial vehicle over any national parkway or any road or highway established as a part of the Federal-aid System, as defined in section 101 of title 23, United States Code, which is commonly used by the public as a means of travel between two places either or both of which are outside any unit or area at which recreation fees are charged under this Act

(H) For travel by private, noncommercial vehicle, boat, or aircraft over any road or highway, waterway, or airway to any land in which such person has any property right if such land is within any unit or area at which recreation fees are charged under this Act

(I) For any person who has a right of access for hunting or fishing privileges under a specific provision of law or treaty.

(J) For any person who is engaged in the conduct of official Federal, State, Tribal, or local government business.

(K) For special attention or extra services necessary to meet the needs of the disabled.

(2) RELATION TO FEES FOR USE OF HIGHWAYS OR ROADS.—An entity that pays a special recreation permit fee or similar permit fee shall not be subject to a road cost-sharing fee or a fee for the use of highways or roads that are open to private, noncommercial use within the boundaries of any Federal recreational lands or waters, as authorized under section 6 of Public Law 88–657 (16 U.S.C. 537; commonly known as the Forest Roads and Trails Act).

(3) PROHIBITION ON FEES FOR CERTAIN PERSONS OR PLACES.—The Secretary shall not charge an entrance fee or standard amenity recreation fee for the following:

(A) Any person under 16 years of age.

(B) Outings conducted for noncommercial educational purposes by schools or bona fide academic institutions.

(C) The U.S.S. Arizona Memorial, Independence National Historical Park, any unit of the National Park System within the District of Columbia, or Arlington House-Robert E. Lee National Memorial.

(D) The Flight 93 National Memorial.

(E) Entrance on other routes into the Great Smoky Mountains National Park or any part thereof unless fees are charged for entrance into that park on main highways and thoroughfares.

(F) Entrance on units of the National Park System containing deed restrictions on charging fees.

(G) An area or unit covered under section 203 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 16 U.S.C. 410hh-2), with the exception of Denali National Park and Preserve.

(H) A unit of the National Wildlife Refuge System created, expanded, or modified by the Alaska National Interest Lands Conservation Act (Public Law 96-487).

(I) Any person who visits a unit or area under the jurisdiction of the United States Fish and Wildlife Service and who has been issued a valid migratory bird hunting and conservation stamp issued under section 2 of the Act of March 16, 1934 (16 U.S.C. 718b; commonly known as the Duck Stamp Act).

(J) Any person engaged in a nonrecreational activity authorized under a valid permit issued under any other Act, including a valid grazing permit.

(4) NO RESTRICTION ON RECREATION OPPORTUNITIES.—Nothing in this Act shall limit the use of recreation opportunities only to areas designated for collection of recreation fees.

(e) ENTRANCE FEE.—

(1) AUTHORIZED SITES FOR ENTRANCE FEES.—The Secretary of the Interior may charge an entrance fee for a unit of the National Park System, including a national monument administered by the National Park Service, or for a unit of the National Wildlife Refuge System.

(2) PROHIBITED SITES.—The Secretary shall not charge an entrance fee for Federal recreational lands and waters managed by the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service.

(f) STANDARD AMENITY RECREATION FEE.—Except as limited by subsection (d), the Secretary may charge a standard amenity recreation fee for Federal recreational lands and waters under the jurisdiction of the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service, but only at the following:

- (1) A National Conservation Area.
- (2) A National Volcanic Monument.
- (3) A destination visitor or interpretive center that provides a broad range of interpretive services, programs, and media.
- (4) An area—
 - (A) that provides significant opportunities for outdoor recreation;
 - (B) that has substantial Federal investments;
 - (C) where fees can be efficiently collected; and
 - (D) that contains all of the following amenities:
 - (i) Designated developed parking.
 - (ii) A permanent toilet facility.
 - (iii) A permanent trash receptacle.
 - (iv) Interpretive sign, exhibit, or kiosk.
 - (v) Picnic tables.
 - (vi) Security services.

(g) EXPANDED AMENITY RECREATION FEE.—

(1) NPS AND USFWS AUTHORITY.—Except as limited by subsection (d), the Secretary of the Interior may charge an expanded amenity recreation fee, either in addition to an entrance fee or by itself, at Federal recreational lands and waters

under the jurisdiction of the National Park Service or the United States Fish and Wildlife Service when the Secretary of the Interior determines that the visitor uses a specific or specialized facility, equipment, or service.

(2) OTHER FEDERAL LAND MANAGEMENT AGENCIES.—Except as limited by subsection (d), the Secretary may charge an expanded amenity recreation fee, either in addition to a standard amenity fee or by itself, at Federal recreational lands and waters under the jurisdiction of the Forest Service, the Bureau of Land Management, or the Bureau of Reclamation, but only for the following facilities or services:

(A) Use of developed campgrounds that provide at least a majority of the following:

- (i) Tent or trailer spaces.
- (ii) Picnic tables.
- (iii) Drinking water.
- (iv) Access roads.
- (v) The collection of the fee by an employee or agent of the Federal land management agency.
- (vi) Reasonable visitor protection.
- (vii) Refuse containers.
- (viii) Toilet facilities.
- (ix) Simple devices for containing a campfire.

(B) Use of highly developed boat launches with specialized facilities or services such as mechanical or hydraulic boat lifts or facilities, multi-lane paved ramps, paved parking, restrooms and other improvements such as boarding floats, loading ramps, or fish cleaning stations.

(C) Rental of cabins, boats, stock animals, lookouts, historic structures, group day-use or overnight sites, audio tour devices, portable sanitation devices, binoculars or other equipment.

(D) Use of hookups for electricity, cable, or sewer.

(E) Use of sanitary dump stations.

(F) Participation in an enhanced interpretive program or special tour.

(G) Use of reservation services.

(H) Use of transportation services.

(I) Use of areas where emergency medical or first-aid services are administered from facilities staffed by public employees or employees under a contract or reciprocal agreement with the Federal Government.

(J) Use of developed swimming sites that provide at least a majority of the following:

- (i) Bathhouse with showers and flush toilets.
- (ii) Refuse containers.
- (iii) Picnic areas.
- (iv) Paved parking.
- (v) Attendants, including lifeguards.
- (vi) Floats encompassing the swimming area.
- (vii) Swimming deck.

[(h) SPECIAL RECREATION PERMIT FEE.—The Secretary may issue a special recreation permit, and charge a special recreation permit fee in connection with the issuance of the permit, for specialized recreation uses of Federal recreational lands and waters, such as

group activities, recreation events, motorized recreational vehicle use.]

(h) *SPECIAL RECREATION PERMIT AND FEE.*—

(1) *IN GENERAL.*—*The Secretary may—*

(A) *issue a special recreation permit for Federal recreational lands and waters; and*

(B) *charge a special recreation permit fee in connection with the issuance of the permit.*

(2) *SPECIAL RECREATION PERMITS.*—*The Secretary may issue special recreation permits in the following circumstances:*

(A) *For specialized individual and group use of Federal facilities and Federal recreational lands and waters, such as, but not limited to, use of special areas or areas where use is allocated, motorized recreational vehicle use, and group activities or events.*

(B) *To recreation service providers who conduct outfitting, guiding, and other recreation services on Federal recreational lands and waters managed by the Forest Service, Bureau of Land Management, Bureau of Reclamation, or the United States Fish and Wildlife Service.*

(C) *To recreation service providers who conduct recreation or competitive events, which may involve incidental sales on Federal recreational lands and waters managed by the Forest Service, Bureau of Land Management, Bureau of Reclamation, or the United States Fish and Wildlife Service.*

(3) *REDUCTION IN FEDERAL COSTS AND DUPLICATION OF ANALYSIS.*—

(A) *IN GENERAL.*—*The issuance of a new special recreation permit for activities under paragraph (2) shall be categorically excluded from further analysis and documentation under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if the proposed use is the same as or similar to a previously authorized use and the Secretary determines that such issuance does not have significant environmental effects based upon application of the extraordinary circumstances procedures established by the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

(B) *DEFINITION.*—*For the purposes of this paragraph, the term “similar” means—*

(i) *substantially similar in type, nature, and scope; and*

(ii) *will not result in significant new impacts.*

(4) *RELATION TO FEES FOR USE OF HIGHWAYS OR ROADS.*—*An entity that pays a special recreation permit fee shall not be subject to a road cost-sharing fee or a fee for the use of highways or roads that are open to private, noncommercial use within the boundaries of any Federal recreational lands or waters, as authorized under section 6 of Public Law 88–657 (16 U.S.C. 537).*

* * * * *

ROB BISHOP OF UTAH
CHAIRMAN

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

July 10, 2017

The Honorable K. Michael Conaway
Chairman
Committee on Agriculture
1301 Longworth HOB
Washington, DC 20515

Dear Mr. Chairman:

On June 27, 2017, the Committee on Natural Resources ordered reported as amended H.R. 289, the Guides and Outfitters Act, by voice vote. The bill was referred primarily to the Committee on Natural Resources, with an additional referral to the Committee on Agriculture.

I ask that you allow the Committee on Agriculture to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Agriculture represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Natural Resources to memorialize our understanding.

Thank you for your consideration of my request and for the extraordinary cooperation shown by you and your staff over matters of shared jurisdiction. I look forward to further opportunities to work with you this Congress.

Sincerely,



Rob Bishop
Chairman
Committee on Natural Resources

cc: The Honorable Paul D. Ryan, Speaker of the U.S. House of Representatives
The Honorable Kevin McCarthy, Majority Leader, U.S. House of Representatives
The Honorable Raul M. Grijalva, Ranking Member, Committee on Natural Resources

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Committee on Agriculture
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July 10, 2017

The Honorable Rob Bishop
 Chairman
 Committee on Natural Resources
 1324 Longworth HOB
 Washington, D.C. 20515

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MATTHEW S. SCHERTZ,
 STAFF DIRECTOR
 ANNE SIMMONS,
 MINORITY STAFF DIRECTOR

RCVD:
 7/10/17

Dear Mr. Chairman:

Thank you for the opportunity to review H.R. 289, the Guides and Outfitters Act. As you are aware, the bill was primarily referred to the Committee on Natural Resources, while the Agriculture Committee received an additional referral.

I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I agree to discharge H.R. 289 from further consideration by the Committee on Agriculture. I do so with the understanding that by discharging the bill, the Committee on Agriculture does not waive any future jurisdictional claim on this or similar matters. Further, the Committee on Agriculture reserves the right to seek the appointment of conferees, if it should become necessary.

I ask that you insert a copy of our exchange of letters into the *Congressional Record* during consideration of this measure on the House floor.

Thank you for your courtesy in this matter and I look forward to continued cooperation between our respective committees.

Sincerely,


 K. Michael Conaway
 Chairman

cc: The Honorable Paul D. Ryan, Speaker
 The Honorable Collin C. Peterson
 The Honorable Raul Grijalva
 The Honorable Thomas J. Wickham, Parliamentarian

ADDITIONAL VIEWS

H.R. 289 amends the Federal Lands Recreation Enhancement Act (FLREA)¹ to adjust recreation-related permitting and fee authority at the Department of Interior and Department of Agriculture. The stated purpose of the bill is to reduce permitting time and administrative hurdles faced by permit applications. We are open to the idea of improving the permit process to ensure timely and transparent access to public lands for recreation activities and other special events; however, we are concerned that some of the methods used by the bill could lead to more problems than they solve.

For example, Section 2 creates a categorical exclusion for permits related to activities that have been previously considered through the National Environmental Policy Act (NEPA) process. Categorical exclusions are reserved for types of activities that are determined to have limited environmental impacts. They are most commonly developed through a rulemaking process, which allows for public comment and provides the agency with the flexibility to determine when they are appropriate. The Forest Service already stresses the use of existing categorical exclusions for special recreation permits and does what it can with available resources to speed up permit processing time. It is unclear why this section is necessary or appropriate. If current categorical exclusions are insufficient, Congress should encourage a rulemaking process to address the inadequacies.

At markup, the committee adopted an amendment by Representative LaMalfa. The amendment adds a reference to the 'extraordinary circumstances' regulations used by agencies to evaluate the use of categorical exclusions. While we appreciate the effort to address some of our concerns, we still believe that Congress is not the appropriate venue for establishing categorical exclusions. Moreover, there is some question as to whether this provision will do anything to provide more permits or speed up processing times. Decisions about permits on public lands, in addition to the requirements of NEPA, include carrying capacity determinations and wilderness compatibility assessments, among other considerations. Under-staffing and shrinking appropriations add to the challenge of completing all of these necessary requirements. Funding adequate staff levels, not limiting public review, is the best way to improve permit processing times.

We are also concerned with Sec. 6, which addresses the Forest Service's permit review process. One major concern is that the bill allows for existing permit holders to receive additional capacity above the caps put in place by the original permit. Automatic allocation of additional capacity to existing permits holders could inad-

¹16 U.S.C. 6802.

vertently lead to increased utilization for permit holders that are not meeting their evaluation standards. At a minimum, increased capacity should only be available to individuals and organizations with a solid record of performance. For example, a guide that provides services on horseback should not be allowed to add more horses to the operation unless they are meeting agency standards. Section 6 could also decrease availability for new permit applications. The cap adjustments should only be available when there is no demand for the additional capacity. We should be encouraging more groups and organizations to engage in activities on our public lands, not simply incentivizing existing users.

We share the goal of increasing the availability of special recreation permits on public lands and hope that we can address these concerns if this bill moves forward.

RAÚL M. GRIJALVA,
*Ranking Member, House
Natural Resources Com-
mittee.*

COLLEEN HANABUSA,
*Ranking Member, Sub-
committee on Federal
Lands.*

JARED HUFFMAN,
*Ranking Member, Sub-
committee on Water, Power
and Oceans.*

NANETTE DIAZ BARRAGÁN,
Member of Congress.

DARREN SOTO,
Member of Congress.

A. DONALD MCEACHIN,
*Ranking Member, Sub-
committee on Oversight
and Investigations.*

